

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

TUANJA EDWARD ANDERSON,  
Plaintiff,  
v.  
A. HERNANDEZ, et al.,  
Defendants.

Case No.: 3:15-cv-00993-BEN-BLM

**ORDER:**

**(1) ADOPTING REPORT AND  
RECOMMENDATION;**

**(2) GRANTING IN PART  
DEFENDANTS' MOTION TO  
DISMISS;**

**(3) DENYING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT FOR FAILURE TO  
EXHAUST ADMINISTRATIVE  
REMEDIES; AND**

**(4) DENYING PLAINTIFF'S  
MOTION TO BE TRANSFERRED  
TO ANOTHER INSTITUTION**

Plaintiff Tuanja Edward Anderson, a state prisoner proceeding *pro se* and *in forma pauperis*, brought this action under 42 U.S.C. § 1983 for violations of the Americans with Disabilities Act ("ADA") and the Eighth Amendment. Defendants filed a motion to

1 dismiss the Complaint (ECF No. 23) and for summary judgment for failure to exhaust  
 2 administrative remedies (ECF No. 24). Plaintiff filed a motion requesting transfer to  
 3 another institution. (ECF No. 34.)

4 On June 20, 2016, the Honorable Barbara L. Major, United States Magistrate  
 5 Judge, issued a thorough and thoughtful Report and Recommendation (“R&R”) in which  
 6 she recommended (1) granting in part and denying in part Defendants’ motion to dismiss,  
 7 (2) denying Defendants’ motion for summary judgment, and (3) denying Plaintiff’s  
 8 motion to be transferred to another institution. (ECF No. 37.) Defendants object to the  
 9 R&R’s recommendation to deny Defendants’ motion for summary judgment on the  
 10 ground that Plaintiff failed to exhaust his administrative remedies. (ECF No. 38.)  
 11 Plaintiff replied to Defendants’ Objections. (ECF No. 39.)

12 Where a timely objection to a report and recommendation has been filed, the  
 13 district court reviews *de novo* those portions of the report or specific proposed findings or  
 14 recommendations to which an objection was filed. 28 U.S.C. § 636(b)(1). This Court  
 15 has carefully reviewed the R&R, Defendants’ Objections, Plaintiff’s Reply, and the  
 16 remainder of the record in this matter and **ADOPTS** the R&R in full.

## 17 **I. LAW GOVERNING EXHAUSTION OF ADMINISTRATIVE REMEDIES**

18 The Prison Litigation Reform Act (“PLRA”) requires a prisoner to exhaust  
 19 “available administrative remedies” before bringing an action with respect to prison  
 20 conditions. 42 U.S.C. § 1997e(a). The proper procedural device to determine whether  
 21 administrative remedies have been exhausted is a summary judgment motion. *Williams*  
 22 *v. Paramo*, 775 F.3d 1182, 1191 (9th Cir. 2015) (citing *Albino v. Baca*, 747 F.3d 1162,  
 23 1168 (9th Cir. 2014)). To prove a failure to exhaust, the defendant “must first prove that  
 24 there was an available administrative remedy and that the prisoner did not exhaust that  
 25 available remedy.” *Id.* “Then, the burden shifts to the plaintiff, who must show that  
 26 there is something particular in his case that made the existing and generally available  
 27 administrative remedies effectively unavailable to him by ‘showing that the local  
 28 remedies were ineffective, unobtainable, unduly prolonged, inadequate, or obviously

1 futile.’’ *Id.* (internal citation omitted). The ultimate burden of proof, however, remains  
2 with the defendant. *Id.*

3 If undisputed evidence viewed in the light most favorable to the prisoner shows a  
4 failure to exhaust, the defendant is entitled to summary judgment under Federal Rule of  
5 Civil Procedure 56. *Albino*, 747 F.3d at 1166. If material facts are disputed, summary  
6 judgment should be denied. *Id.*

## 7 **II. DISCUSSION**

8 The Court has reviewed Defendants’ objections and the record in this case, and  
9 overrules each objection.

10 Defendants first argue that Plaintiff’s claims under the ADA and for deliberate  
11 indifference to medical needs have not been exhausted. Relatedly, they oppose the  
12 R&R’s conclusion that Defendants did not present any evidence establishing what, if any,  
13 administrative remedies and processes were available to Plaintiff at the various prisons  
14 and psychiatric facilities where he was housed or whether he was provided access to  
15 writing materials and the relevant prison forms at all times during his treatment in each of  
16 the facilities.

17 The R&R found that there is a genuine issue of material fact as to whether Plaintiff  
18 had meaningful access to the administrative remedy process during the relevant times at  
19 the relevant facilities. Having considered the R&R, Defendants’ Objections, and the  
20 record, the Court agrees with the R&R. Defendants did not establish “the extent of the  
21 availability of the administrative process during [Plaintiff’s] placement in a mental health  
22 crisis bed, suicide watch, and Plaintiff’s subsequent recovery.” *Millner v. Biter*, No. 13-  
23 cv-2029, 2016 WL 110425, at \*6 (E.D. Cal. Jan. 11, 2016). Genuine disputed issues of  
24 material fact exist as to whether the administrative remedies were “effectively  
25 unavailable” to Plaintiff.

26 Defendants also object to the R&R’s analysis that there is a genuine issue of  
27 material fact as to whether Plaintiff submitted a timely grievance about his deliberate  
28 indifference to safety claim, and whether prison officials prevented the grievance from

1 being processed. The Court again overrules Defendants' objection. Plaintiff's sworn  
2 statements in his declaration and Complaint are evidence that he attempted to file a  
3 timely grievance with C/O Crawford, and that prison officials made the administrative  
4 process unavailable to him. Defendants' declarations constitute evidence that Plaintiff  
5 did not file a timely appeal. As the R&R noted, "[t]his is clearly a disputed material fact  
6 and it is not the Court's province on a motion for summary judgment to make credibility  
7 determinations or weigh conflicting evidence with respect to a disputed material fact."  
8 (R&R at 38.)

### 9 **III. CONCLUSION**

10 The R&R correctly concludes that Defendants have not established that they are  
11 entitled to summary judgment on the basis of Plaintiff's failure to exhaust administrative  
12 remedies. Accordingly, Defendants' objections are overruled and the R&R, including the  
13 portions to which no objections were made, is **ADOPTED** in its entirety.

14 The Court orders as follows:

15 Defendants' motion to dismiss is **GRANTED IN PART**. Specifically, the Court  
16 (1) grants Defendants' motion to dismiss claims against Associate Warden Hernandez but  
17 grants Plaintiff leave to amend; (2) grants the motion to dismiss Plaintiff's ADA claim  
18 against Defendants Stout and Hernandez in their individual capacities and dismisses the  
19 individual capacity claims with prejudice; (3) grants the motion to dismiss the ADA  
20 claim but grants Plaintiff leave to amend to state a claim against the California  
21 Department of Corrections and Rehabilitation; (4) grants the motion to dismiss Plaintiff's  
22 claim for deliberate indifference to safety against Defendants Heddy, Davis, and Bustos  
23 but grants Plaintiff leave to amend; and (5) grants the motion to dismiss Plaintiff's claim  
24 for deliberate indifference to his medical needs against Defendants Heddy, Davis, Bustos,  
25 and Miller but grants Plaintiff leave to amend.

26 ///

27 ///

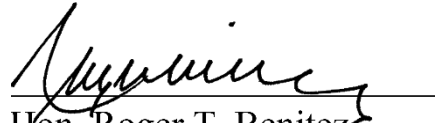
28 ///

1 Defendants' motion for summary judgment is **DENIED**.

2 Plaintiff's motion to be transferred to another institution is **DENIED**.

3 **IT IS SO ORDERED.**

4  
5 Dated: August 29, 2016

6   
7 Hon. Roger T. Benitez  
8 United States District Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28